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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/691,944	10/20/2000	Jean-Louis H. Gueret	05725.0776-00	5397

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[REDACTED] EXAMINER

LE, HUYEN D

ART UNIT	PAPER NUMBER
3751	

DATE MAILED: 12/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/691,944	JEAN-LOUIS GUERET	
	<b>Examiner</b>	<b>Art Unit</b>	
	Huyen Le	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 13 September 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-85 is/are pending in the application.

4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.

5) Claim(s) 13 and 80 is/are allowed.

6) Claim(s) 1-3, 7-12, 29-32, 38-43, 45, 48, 49, 52, 55, 59-65, 67-79, 81, 84 and 85 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

Continuation of Disposition of Claims: Claims withdrawn from consideration are 4-6,14-28,33-37,44,46,47,50,51,53,54,56-58,66,82 and 83,12.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 7-12, 29, 30, 32, 41-43, 48, 49, 52, 59-65, 70-79, 81, 84 and 85 are rejected under 35 U.S.C. 102(b) as being anticipated by Capezzuto (3,132,370).

The Capezzuto reference discloses an applicator comprising a reservoir 10, a removable closure 20, an applicator member 36 having a product application surface movable between a first position wherein it extends out of the reservoir (Fig. 3) and a second position wherein it is substantially contained in the reservoir (Fig. 2), and an elastically compressible support 34 supporting the applicator member 36 and the support 34 having a compressibility greater than the compressibility of the applicator member 36.

Regarding claims 7-10, the support 34 includes a block of foam (col. 2, lines 59-60).

Regarding claims 11 and 12, the applicator member 36 is attached to the support 34 by crimping by flange 28.

Regarding claims 29 and 30, the product application surface of the applicator member 36 has a convex profile or a dome (Fig. 3).

Regarding claim 32, the applicator member 36 includes a perforated element (col. 2, lines 65-66).

Regarding claims 41-43, the reservoir includes a compressible body which is a deformable tube (col. 2, line 16).

Regarding claims 59-62, all functional statements of the intended use have been carefully considered but deemed not to impose any structural limitations on the claims distinguishable over the applicator device of Capezzuto which is capable of being used to apply any kind of cosmetic products, glue, correction fluid, and a stain remover.

Regarding claim 63, the method of applying a cosmetic product is inherently performed during normal operation of the applicator.

Regarding claim 64, the applicator device comprises an absorbent member having a first portion 36 configured to apply a liquid product to a surface and a second support portion 34 configured to elastically support the first portion 36, wherein the first portion 36 has a different density than the second portion (because of material differences).

Regarding claim 81, the applicator member 36 includes a recessed portion which is an area located under the lower surface of the applicator member as shown in Figs. 2 and 3.

Regarding claim 85, the second end portion of the applicator 36 is in first position, the application member 36 is in flow communication with the reservoir.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 38-40 and 67-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Capezzuto (3,132,370).

The Capezzuto reference discloses an applicator device as described above.

Although the Capezzuto reference is not specific as to what sizes the open cells of the foam support 34 should be, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a size for open cells of the foam support within a certain range to best fit a particular applicator depending on a liquid applied and to optimize the performance of the applicator. See In re Aller, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

5. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capezzuto (3,132,370).

The Capezzuto reference discloses an applicator device as described above.

Although the Capezzuto reference is not specific that the compressibility of the support 34 is two to four times greater than the compressibility of the applicator member 36, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select a support having a certain compressibility range to best fit a particular applicator design and to optimize the performance of the applicator. See In re

Aller, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

6. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capezzuto (3,132,370) in view of McCabe et al (2,659,919).

The Capezzuto reference discloses an applicator device as described above.

Although the Capezzuto applicator device does not include a diaphragm portion on the reservoir 10, attention is directed to the McCabe et al reference which discloses another applicator device comprising a reservoir 12 having a diaphragm portion 14a for facilitating delivering the liquid 12 to an applicator member 17.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a reservoir with a diaphragm in the Capezzuto applicator device in view of the teaching of the McCabe et al reference in order to facilitating delivering the fluid to the applicator member.

#### ***Response to Arguments***

7. Applicant's arguments filed on September 13, 2002 in the Amendment (paper no. 9) have been fully considered but they are not persuasive.

In regard to applicant's arguments that the membrane 36 of Capezzuto is made of woven and not an "absorbent" material, the Capezzuto reference discloses the membrane 36 being a permeable membrane which may be formed of fabrics of artificial or natural fibers (col. 1, lines 53-57 and col. 2, lines 64-66). To an extent, a permeable membrane being made of fabrics of natural fibers (cotton) is capable of absorbing liquid and is considered as an "absorbent" material.

***Allowable Subject Matter***

8. Claims 13 and 80 are allowed.

***Conclusion***

9. The reply filed on September 13, 2002 is not fully responsive to the prior art made of record and not relied upon which may be used in formulating rejections over the claims. The Miles 93,133,309) reference discloses an applicator having an applicator member 93 and an elastically compressible support 95, wherein the support 95 has compressibility greater than the compressibility of the applicator member (col. 6, lines 72+, col. 7, lines 3-5). The Gueret (6,386,781) discloses an applicator having an applicator member 12 and an elastically compressible support 12', wherein the support 12' has the compressibility greater than the compressibility of the applicator member 12 (Fig. 5 and col. 9, lines 30-33).

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Schwartzman '375 and 808', Wakai, Hegland, Runnels, Hironaka et al, and Fraleigh references shows applicators having applicator members and elastically compressible supports.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 703-306-5504. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 703-308-2580. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7766 for regular communications and 703-308-7766 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

*HL*  
November 29, 2002



A handwritten signature in black ink, appearing to read "Gregory Huson". To the right of the signature is the date "12/2/02" written vertically.

GREGORY HUSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700